

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JOE M. RAY, JR.,)	
)	
Plaintiff,)	
)	
VS.)	No. 2:07-cv-2598 JPM-dkv
)	
FEDERAL EXPRESS,)	
)	
Defendant.)	

ORDER ADOPTING RECOMMENDATION OF MAGISTRATE JUDGE;
ORDER ON MOTION FOR CLARIFICATION;
ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO
FEDERAL EXPRESS CORPORATION;
ORDER DENYING AS MOOT FEDERAL EXPRESS CORPORATION'S
MOTION TO DISMISS;
ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT;
ORDER DIRECTING PLAINTIFF TO SERVE NEW SUMMONS AND AMENDED
COMPLAINT ON FEDEX SERVICES; and
ORDER DENYING MOTION TO COMPEL WITHOUT PREJUDICE

Before the Court is the Recommendation of Magistrate Judge Diane K. Vescovo (DE # 24), submitted on June 18, 2008, recommending that the Court enter an order on Federal Express Corporation's Motion for Clarification (DE # 21) and (1) dismiss Federal Express Corporation from this lawsuit without prejudice, (2) require Plaintiff Joe M. Ray, Jr. ("Plaintiff") to file and docket an amended complaint naming FedEx Services as the defendant, (3) require Plaintiff to have a new summons issued for FedEx Services, and (4) require Plaintiff to serve the new summons along with a copy of the amended complaint on FedEx

Services pursuant to Rule 4 of the Federal Rules of Civil Procedure. Upon de novo review, the Court ADOPTS the Magistrate Judge's Recommendation in its entirety.

No objections to the Recommendation have been filed, and the time for filing objections has expired. See 28 U.S.C. § 636(b)(1)(C); see also Harris v. City of Akron, 20 F.3d 1396, 1402-03 (6th Cir. 1994) ("Failure to file an objection to a magistrate judge's recommendation constitutes a waiver of the right to appeal on the basis of that recommendation.") (citing Thomas v. Arn, 474 U.S. 140, 153-54 (1985)); Frontier Ins. Co. v. Blaty, 454 F.3d 590, 596-97 (6th Cir. 2006).

It is therefore ORDERED that Plaintiff's claims against Federal Express Corporation are DISMISSED WITHOUT PREJUDICE. Federal Express Corporation's Motion to Dismiss (DE # 27) is DENIED AS MOOT.

It is further ORDERED that Plaintiff must file and have docketed his amended complaint, naming FedEx Services as the defendant, within fifteen (15) days of the date of this Order. Additionally, Plaintiff must have a new summons issued for FedEx Services and serve the new summons along with a copy of the amended complaint on FedEx Services pursuant to Rule 4 of the Federal Rules of Civil Procedure. After Plaintiff's amended complaint is docketed, the style of this case shall be changed to indicate the removal of Federal Express Corporation as

defendant and the addition of FedEx Services as defendant. All filings made in this case after Plaintiff's amended complaint is docketed shall reflect this change.

Plaintiff filed a Motion to Compel Production of Documents (DE # 18) on May 13, 2008. While the caption of Plaintiff's Motion lists "FedEx Corporate Services, Inc." as the only defendant, Plaintiff directed his Motion towards Federal Express Corporation, as evidenced in the Certificate of Service. Fedex Services is not yet a party to this litigation as Plaintiff has yet to file his amended complaint, and Federal Express Corporation is no longer a party to this litigation as discussed supra. As a result, Plaintiff's Motion to Compel is DENIED WITHOUT PREJUDICE.

SO ORDERED this 24th day of July, 2008.

/s/ JON P. McCALLA
UNITED STATES DISTRICT JUDGE